

## **BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

<b>IN THE MATTER OF THE COMPLAINT FILED ) BY THE CITY OF BRANDON, BRANDON, ) SOUTH DAKOTA, AGAINST JEREMY ) SCADDEN CONSTRUCTION, VALLEY ) SPRINGS, SOUTH DAKOTA )</b>	<b>FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER OC06-008</b>
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On October 2, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by the City of Brandon, Brandon, South Dakota (Brandon), against Jeremy Scadden Construction, Valley Springs, South Dakota (Scadden). According to the complaint, Scadden failed to call South Dakota One Call for a locate ticket prior to clearing trees and brush for a new home and driveway at 205 Fairview Avenue, Brandon, SD. The complaint alleges such action was a violation of SDCL 49-7A-5.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to Scadden by U.S. mail on October 6, 2006, advising him that he must file an answer in writing by October 27, 2006. Scadden filed an answer to the complaint on November 2, 2006. Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Jerry Schroeder, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on November 3, 2006. Pursuant to SDCL 49-7A-25, based on the complaint filed by Brandon, the Panel determined by unanimous vote that there was insufficient evidence to believe Scadden was guilty of the violations of the statute as alleged in the complaint.

Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations was sent to the parties. The Board did not receive an acceptance or rejection of the Panel's recommendations from either Brandon or Scadden.

A hearing was held as scheduled on May 4, 2007, at 9:00 a.m., in the International East Conference Room, Holiday Inn City Centre, 100 West 8<sup>th</sup> Street, Sioux Falls, SD. This hearing was conducted along with OC06-007, 009 and 010. The City of Brandon was present and represented by counsel. Scadden was present and also represented by counsel. Brandon presented evidence through the testimony of Wayne Fletcher, Jimmie Fjerstad, and Rollie Hoeke. Scadden presented evidence through his own testimony. The issue at the hearing was whether Scadden failed to notify the one-call center before excavating in violation of SDCL 49-7A-5.

At the conclusion of the hearing, a motion was made by Eugene Solseth, a Board member present at the hearing. He moved the Complaint as filed by Brandon failed on its face due to an incorrect address. He further moved that no finding be made whether Scadden violated SDCL 49-7A-5 or any other One Call Rule or Statute. Doug Larson, Board Member, provided a second to the motion. Chairman Jerry Schroeder called for discussion on the motion. There was no discussion and a vote was taken of all the members present. There was a unanimous vote by all the members of the Board present at the hearing in support of the motion. Those members present at the hearing for the vote included: Jerry Schroeder, Todd Chambers, Kevin Kouba, Bleau LaFave, Eugene Solseth, Doug Larson, Rod Cundy and Kurt Pfeifle.

Having considered the evidence of record and applicable law, the Board makes the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. On October 2, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board received a complaint filed by the City of Brandon, Brandon, South Dakota, against Scadden, Valley Springs, South Dakota. According to the complaint, Scadden cleared trees and brush for a new home and driveway without first notifying the South Dakota One Call System. The complaint alleged Scadden failed to notify the one-call center before excavating in violation of SDCL 49-7A-5.
2. Brandon presented evidence and exhibits to the Board through the testimony of Wayne Fletcher, the Director of Public Works for Brandon, Jimmie Fjerstad, the One Call locator for the City of Brandon, and Rollie Hoeke, the Public Works Supervisor for the City of Brandon. Scadden presented evidence and exhibits to the Board through his own testimony.
3. Although the alleged excavation site and the subject of this docket is 213 Fairview Avenue, the complaint submitted by Brandon states 205 Fairview Avenue as the excavation site. Brandon did not make any attempts to correct the Complaint prior to the hearing. Transcript pages 53 through 56.

### **CONCLUSIONS OF LAW**

1. The Board finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-5, 49-7A-8, 49-7A-10, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive, and SDCL Chapter 1-26.
2. The Board finds the Complaint alleging the excavation fails due to the incorrect address. The Board finds it cannot judge any facts surrounding an alleged excavation at a completely separate address than was complained of.
3. The Board does not, therefore, make any findings regarding the substance of the Complaint and this docket is dismissed.

It is therefore

ORDERED, that this complaint is dismissed and the docket closed.

### **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that this Order was duly entered on the 13<sup>th</sup> day of June, 2007. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Sioux Falls, South Dakota, this 13<sup>th</sup> day of June, 2007.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

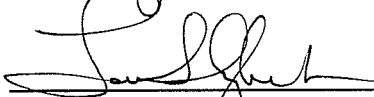
By: 

Date: 6/13/07

(OFFICIAL SEAL)

BY ORDER OF THE SOUTH DAKOTA ONE-CALL BOARD:

  
JERRY SCHROEDER, Chairman

  
Under the Authority and on behalf of the  
Chairman

LARRY ENGLERTH, Executive Director